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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/475,806 06/07/95 HAGENBUCH

B3M1/1115

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EXAMINER	
ZANELLI, M	
ART UNIT	PAPER NUMBER

2304
DATE MAILED:

11/15/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 9/26/95 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☒ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☒ Notice of Art Cited by Applicant, PTO-1449. (14 sheets)
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

- ☒ Claims 31-37 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
- ☒ Claims 1-30 have been cancelled.
- ☐ Claims _____ are allowed.
- ☒ Claims 31-37 are rejected.
- ☐ Claims _____ are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
- ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

Art Unit: 2304

Part III DETAILED ACTION

1. This application is acknowledged as a Continuation of S.N. 08/403069, filed 3/13/95. The preliminary amendments filed 6/7/95 and 9/26/95 have been entered. Claims 1-30 have been cancelled and claims 31-37 have been newly added.
2. The prior art submitted on 9/26/95, 10/10/95 and 10/26/95 have been considered. Note that the patent to Mercer, Jr. (4,148,369), which corresponds to JP 54-54071, has already been cited (see reference BU on page 2 of 9).
3. The drawings have been approved by the draftsman.
4. The oath or declaration is defective. A new oath or declaration in compliance with 37 C.F.R. § 1.67(a) identifying this application by its Serial Number and filing date is required. See M.P.E.P. §§ 602.01 and 602.02.

The oath or declaration is defective because: The declaration filed in the parent case does not identify the specification to which it is attached. The declaration should also be updated to reflect all previous applications to which priority under § 120 is being claimed.

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
6. The title of the invention is not reflective of the invention claimed. A new title is required that is clearly indicative of the invention to which the claims are directed.

Art Unit: 2304

7. Claims 31-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 13 and 14 of U.S. Patent 5,416,706. Although the conflicting claims are not identical, they are not patently distinct from each other because both sets of claims are directed to compiling an historical record which correlates a machine-readable code associated with a container as well as measuring the weight of a load. The apparatus set forth in both sets of claims comprises essentially identical elements which perform identical functions. The '706 claims recite a refuse-hauling vehicle which is shown in Fig. 25 to include a mechanism for moving the container (i.e. instant claims 31 and 37) such that its contents are dumped into a receptacle on the vehicle. Thus, there is no patentable distinction between the subject matter claimed in the '706 patent and the claims of this application.

8. The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patently distinct from claims in a first patent. In re Vogel, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 CFR § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with application. See 37 CFR § 1.78(d).

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

10. Claims 31-37 are rejected under 35 U.S.C. § 102(e) as being clearly anticipated by Garbade et al. (4,645,018).

Art Unit: 2304

A. As can best be determined by the examiner, the claimed subject matter was introduced in a CIP application, S.N. 06/874273, filed on 6/13/86. Thus, the claimed subject matter is entitled to an effective filing date of 6/13/86.

B. As per claims 31 and 36, Garbade et al. show in the Figure a mechanism (11a,11b,11,12) for moving a container (1); a sensor (8) mounted to the mechanism (vehicle) for reading an identification plate (7) as the container is moved and a processor/recorder (10) for recording information relative to the container (see col. 1, lines 53-65).

C. As per claims 32-35 and 37, as above wherein the mechanism lifts the container from the ground, measures its weight and stores the information along with the container identification and dumps the contents into a receptacle on the vehicle (see col. 3, line 25 to col. 4, line 34).

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note specifically Naab ('656) at cols. 6-8.

12. **REMARKS**

A. The Garbade et al. patent was cited by various references directed toward refuse collection vehicles (see prior art statement filed 10/10/95, references AJ,AK,AP-AS). This reference was further cited by Naab ('392) which led to the discovery of Naab ('656) which also appears to disclose pertinent subject matter.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Michael Zanelli** whose telephone number is **(703) 305-9756**. The examiner can normally be reached on **Monday-Thursday** from **6:30 to 5:00**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin Teska**, can be reached at **(703) 305-2304**. The fax number for this Group is **(703) 305-9564, 9565**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is **(703) 305-9627**.

/mjz
11/2/95


MICHAEL ZANELLI
PRIMARY EXAMINER
GROUP 2300